

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
United Power Line Council)	WC Docket No. 06-10
Petition for Declaratory Ruling Regarding)	
the Classification of Broadband over)	
Power Line Internet Access Service as an)	
Information Service)	
)	
)	

To: Chief, Wireline Competition Bureau

**JOINT COMMENTS OF DUKE ENERGY CORPORATION
AND CINERGY BROADBAND, LLC**

Pursuant to the Public Notice of the Federal Communications Commission (“FCC” or “Commission”),¹ Duke Energy Corporation (“Duke”) and Cinergy Broadband, LLC (“Cinergy Broadband”), by and through their undersigned attorneys, hereby submit these comments in the above-captioned proceeding in support of the Petition for Declaratory Ruling filed by the United Power Line Council (“UPLC”).

I. INTRODUCTION

Duke is a diversified energy company with a portfolio of natural gas and electric businesses, both regulated and unregulated, and an affiliated real estate company. Duke supplies, delivers, and processes energy for customers in North America and selected international markets. Duke is also actively developing Broadband over Power Line (“BPL”)

¹ *Pleading Cycle Established for Comments on United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband Over Power Line Internet Access Service as an Information Service*, DA 06-49 (Jan. 11, 2006).

technologies for commercial Internet access services and for internal use in managing its electric distribution network.

Cinergy Broadband is a wholly-owned subsidiary of Cinergy Corp. (“Cinergy”). Cinergy has a balanced, integrated portfolio consisting of two core businesses: regulated operations and commercial businesses. Cinergy’s integrated businesses make it a Midwest leader in providing both low-cost generation and reliable electric and gas service. Cinergy Broadband is actively developing BPL technologies for commercial Internet access services and for the use of Cinergy’s operating companies in managing their electric distribution networks. One of the operating companies, Cincinnati Gas & Electric Company, was the first investor owned utility to have a commercial BPL network on its distribution system.

Both Duke and Cinergy, therefore, are vitally interested in the regulatory treatment of this promising technology.

II. THE PUBLIC INTEREST WOULD BE SERVED BY GRANTING UPLC’S PETITION

Duke and Cinergy Broadband agree with UPLC that regulatory certainty is needed to assist in solidifying the regulatory and business environment for a nascent industry and technology. BPL offers the potential for the establishment of a significant new medium for extending broadband access to American homes and businesses. Given that power lines reach virtually every residence and business in every community and geographic area in this country, Access BPL service could be made available nearly everywhere, serving to introduce additional competition to existing cable and DSL services.²

² *In re Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems; Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket Nos. 04-37, 03-104, Report and Order, FCC 04-245, at ¶ 1 (rel. Oct. 28, 2004) (“*BPL Order*”).

Regulatory certainty, however, is vital in an industry where more mature technologies function in a virtual duopoly. In order for BPL to deliver on the competitive promise that its ready-built infrastructure has made, Access BPL must be provided with the same regulatory tools to craft its competitive offerings. While cable modem service and DSL enjoy this certainty, BPL does not, which impacts the ability of Access BPL providers to effectively plan and finance their systems and operations. Increasing certainty for BPL will enhance competition and will allow consumers and businesses broader choices from which to select the types of service that best meet their individual needs. Competition makes these services more affordable, and provides incentives for quality service and innovation in new technologies and service features.³ The public interest would be served, therefore, by providing a level playing field to similarly situated broadband competitors.

Duke and Cinergy Broadband also support UPLC's assertions regarding the public interest benefit of BPL used to monitor and control the electric power distribution grid. Use of BPL technologies to create "smart" grids can allow utility crews to pinpoint trouble spots to prevent outages and quickly identify outages when they have occurred, enhancing response times and minimizing down time. Advanced metering applications and surveillance of the electric grid can also enhance energy efficiency and network security efforts. BPL systems also serve an important homeland security function by providing a redundant data network. For these reasons, President George W. Bush has explicitly encouraged the introduction of BPL technology, and the FCC's regulatory policies should promote this initiative.⁴

³ *BPL Order* at ¶ 12.

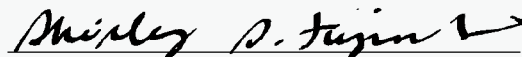
⁴ *BPL Order*, Statement of Cmmr. Martin, *citing* President George W. Bush, *Remarks on Innovation at the U.S. Department of Commerce*, Washington, D.C. (June 24, 2004); *Remarks at the American Association of Community Colleges Annual Convention*, Minneapolis Convention Center, Minneapolis, Minnesota (Apr. 26, 2004).

Duke and Cinergy Broadband also concur that the timing is right for the FCC to act. The Commission has already provided certainty with respect to the technological parameters for BPL; regulatory certainty must follow to fulfill the competitive broadband potential of BPL.⁵ Certainty on a federal level is also important as states begin to consider their roles in the BPL regulatory landscape. The record on BPL in the various proceedings cited by UPLC is extensive, providing significant resources and information upon which the FCC may make a reasoned and supported decision. Accordingly, the FCC should act now to grant UPLC's Petition.

WHEREFORE, THE PREMISES CONSIDERED, Duke Energy Corporation and Cinergy Broadband, LLC respectfully request that the Commission grant UPLC's Request for Declaratory Rulemaking and find that Access BPL services are information services.

Respectfully submitted,

**DUKE ENERGY CORPORATION
CINERGY BROADBAND, LLC**



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⁵ BPL Order at ¶ 1.

CERTIFICATE OF SERVICE

I, Erika Stein, do hereby certify that on the 10th day of February, 2006, a copy of the foregoing Joint Comments of Duke Energy Corporation and Cinergy Broadband, LLC, in the Matter of United Power Line Council Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service, was submitted electronically to the Federal Communications Commission and served upon the following by the method indicated:

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